

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY PETRU, *et al.*,

No. C-11-3892 EMC

Plaintiffs,

v.

APPLE, INC., *et al.*,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
ADMINISTRATIVE MOTION TO
ENLARGE TIME TO RESPOND TO
COMPLAINT**

(Docket No. 16)

Currently pending before the Court is Defendants' motion to enlarge time to answer, move, or otherwise respond to the complaint in the above-referenced case. More specifically, Defendants ask that they be given 60 days after the filing of a consolidated amended complaint or complaints following a decision by the United States Judicial Panel on Multidistrict Litigation in connection with this action. Having considered the parties' briefs and accompanying submissions, the Court hereby **GRANTS** in part and **DENIES** in part Defendants' motion. More specifically, the Court denies the specific relief requested by Defendants but shall, as discussed below, impose a limited stay such that, for the time being, Defendants need not answer, move, or otherwise respond to the complaint.

As Plaintiffs point out, JPML Rule 2.1(d) provides that "[t]he pendency of a motion . . . before the Panel pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in any pending federal district court action and does not limit the pretrial jurisdiction of that court." JPML Rule 2.1(d). A party to the pending federal district court action, however, may

1 petition that court for a stay pending the outcome of a JPML motion, including a motion to transfer
2 and consolidate. “When considering whether to stay proceedings pending a consolidation order,
3 factors to consider include: (1) conserving judicial resources and avoiding duplicative litigation; (2)
4 hardship and inequity to the moving party if the action is not stayed; (3) potential prejudice to the
5 non-moving party.” *Falk v. GMC*, No. C 07-01731 WHA, 2007 U.S. Dist. LEXIS 80864, at *6
6 (N.D. Cal. Oct. 22, 2007).

7 In the instant case, the Court concludes that, at this juncture, the specific stay requested by
8 Defendants is not necessary because the District Court for the Southern District of New York may
9 grant Plaintiffs’ motion to transfer or stay which Plaintiffs filed on August 24, 2011. On the other
10 hand, the Court also concludes that a stay of some kind is appropriate to conserve judicial resources
11 and avoid duplicative litigation. The various cases are all in their infancy, *compare id.* at *10
12 (noting that “[t]his action is too far advanced to bring everything to a halt”), and it is reasonable to
13 delay matters for a brief period of time to see whether the cases will be transferred and/or
14 consolidated in one forum (whether through Plaintiffs’ motion or through the JPML motion).
15 Contrary to what Plaintiffs argue, Defendants will suffer some hardship if forced to respond to
16 multiple complaints. *Compare Luce v. A.W. Chesteron Co., Inc.*, No. C-10-0174 MMC, 2010 U.S.
17 Dist. LEXIS 28920, at *4 (N.D. Cal. Mar. 2, 2010) (noting that “CBS has not identified any
18 hardship or inequity to which it may be subjected in the event this Court, as opposed to the Eastern
19 District of Pennsylvania, considers the merits of plaintiffs’ motion to remand”); *Mandrigues v.*
20 *World Savings, Inc.*, No. C 07-4497 JF (RS), 2008 U.S. Dist. LEXIS 103011, at *7 (N.D. Cal. Dec.
21 12, 2008) (stating that “Defendants have not argued that they would suffer prejudice if a hearing on
22 the class certification and preliminary injunction motions were to proceed”). Furthermore, contrary
23 to what Plaintiffs argue, Defendants may have legitimate reasons for not wanting to join Plaintiffs’
24 motion to transfer or stay (*e.g.*, Defendants may prefer the New York forum), which Plaintiffs
25 maintain is the way to cure any hardship. Finally, a limited stay will ensure that any hardship to
26 Plaintiffs or the putative class is minimized.

27 The Court ultimately finds that a stay until December 15, 2011 – as originally proposed by
28 Defendants – is appropriate. By this date, the District Court for the Southern District of New York

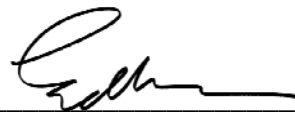
1 will likely have heard and ruled on Plaintiffs' motion to transfer or stay. In addition, by this date,
2 the JPML motion may have been heard and the parties may have developed a sense of how the
3 JPML will likely rule. A stay of this length is not unduly lengthy given that the complaint was filed
4 on only August 9, 2011.

5 As a final point, the Court notes that its ruling here does not bar Plaintiffs from seeking relief
6 from the stay or Defendants from seeking a further stay depending on the rulings of the New York
7 federal court and/or JPML.

8 This order disposes of Docket No. 16.

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10 IT IS SO ORDERED.

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12 Dated: September 1, 2011

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15 EDWARD M. CHEN
16 United States District Judge
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